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When Seattle Citizens Complain*

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One of the most persistent themes of technological society is the alienation of man from his environment and particularly from his government. Old democratic values of "government close to the people" lose meaning when even local government grows larger and more aloof. As in so many encounters with the grimmer aspects of urban expansion, Seattle and Washington State may be experiencing this phenomenon later and less emphatically than have other areas, but the loss is all the more poignant because of the long tradition here of maximum citizen participation in government. Anonymous and olympian government is inconsistent with the friendly openness often considered one of the region's primary attractions. Instead of stimulating the public spirit, such rule impairs it; for when government loses its concern for the individual, the individual may soon lose his concern for the common good.

Certainly government in Seattle and Washington State is not "anonymous and olympian" when establishing policy. Generally, the people are consulted in major decisions at that stage. But the same cannot be said about the administration of policy, where the reasons for a decision tend to become obscure, standards are rigidified and the human element is downplayed. We gain a great deal in efficiency by relying upon professional administrators, but we also inevitably suffer numerous cases of bureaucratic insensitivity, incompetence or unfairness. When citizen contacts with welfare, police, motor vehicle, health, building and other officials

*For the title, the author is indebted to W. Gellhorn, When Americans Complain (1966), a seminal work on the ombudsman in this country.
become increasingly frequent, the ability of government to anticipate and prevent administrative excesses is gravely challenged.

It may be instructive that the neighborhood of the city having greatest contact with the various agencies of government, namely the Central District, is also the one where public confidence in the procedures of government appears to be most lacking. Perhaps it is inevitable, though unfortunate, that citizens who live in poorer neighborhoods feel more acutely the lapses in essential governmental services. Dilapidated housing or delinquent welfare payments are sober reminders of imperfections in government. Other factors are involved in the volatile situation in the black ghetto of our city, of course, but the mutual misunderstandings of citizens and city bureaucracies invariably contribute to the general unrest. The dissatisfactions of Central District residents are discernible, if less pronounced, in other citizens' attitudes.

Friction between government and governed need increase with the increase of contact only if the present system of checks on bureaucracy, which is no system at all, remains unchanged. Reform to provide relief for the individual aggrieved citizen and to smooth the general processes of government is as feasible as it is necessary. The improved public faith in government it would bring, moreover, makes such reform as much in the interest of the administrators themselves as of the general citizenry.

Proclaimed as the cutter of red tape, the righter of bureaucratic wrongs and the citizen's champion, the ombudsman has received widespread, though sometimes superficial, attention in recent years. In Seattle, King County and the state of Washington it is now imperative for public officials to give the idea deeper examination. King County will have one of the nation's first official ombudsmen because the Charter approved by the voters in the November 1968 election contained a sleeper provision specifically establishing something called an Office of Citizen Complaints. After a long delay the County Council, which has the responsibility for filling the post, recently raised the hackles of numerous citizen groups, including the Municipal League, by appointing as "temporary" ombudsman a man whose most noticeable qualification was his past experience as campaign manager of one of the council members. Unquestionably, the selection of the wrong man, for political considerations, could transform an exciting new governmental venture into a monumental flop. Fortunately, local political considerations appear to be responding to the lure of federal money. Currently under consideration is a proposal to establish a joint Seattle-King County ombudsman office to be financed in large part, by Office of Economic Opportunity funds. One condition

1. The leading works are THE AMERICAN ASSEMBLY, OMBUDSMEN FOR AMERICAN GOVERNMENT? (Anderson ed. 1968) [hereinafter cited as American Assembly]; W. GELLMAN, WHEN AMERICANS COMPLAIN (1966); W. GELLMAN, OMBUDSMEN AND OTHERS (1966); THE OMBUDSMAN: CITIZEN'S DEFENDER (Rowat ed. 1965).
2. King County Charter § 260.
of the grant would be the enactment of implementing legislation by the city and county councils conforming generally to the Model Ombudsman State drafted by Walter Gellhorn of the Columbia Law School. Given a sound statutory base and the selection of an ombudsman with a keen awareness of the limitations and potentials of the office, the Seattle-King County experiment could result in a significant milestone in governmental reform.

Originally a Scandinavian institution, the ombudsman was established in New Zealand in 1962. By 1967 variations of the office had been adopted in Great Britain, the Canadian provinces of Alberta and New Brunswick and the American state of Hawaii. Persons called "ombudsmen" were at work, without benefit of formal legislation, in Nassau County, New York, pursuant to order of the County Executive; Buffalo, New York, as a pilot project funded by the Office of Economic Opportunity; and the state of Colorado, where the Lieutenant Governor voluntarily assumed the role as intermediary for citizens who have problems with their government. Congressman Reuss of Wisconsin and Senator Long of Missouri became the prime proponents of legislation that would establish ombudsmen to supervise the federal bureaucracy. At the state level one of the first ombudsman bills was drafted by consumer-advocate Ralph Nader and was introduced in the Connecticut legislature in 1963; since then similar bills have been proposed in numerous states and local law-making bodies. Only last year, the Nebraska state legislature enacted ombudsman legislation loosely reflecting conventional wisdom on the subject.

Given the rapid proliferation and popularization of the concept, it is not surprising that the attendant publicity has created a cloud of misconceptions, especially at the local level where academic notions are tested in the crucible of practical politics. The ombudsman is considered by some to be a potent new fourth branch of government with a ready panacea for many of the ills of modern society, including the crucial question of race relations. According to this understanding, as the citizens' protector he would be empowered to challenge decisions by the agencies, correct their errors, and redirect their policies. Some even argue that the ombudsman would breathe new life into administrative institutions that are coming under heavy fire for their unresponsiveness or incapacity.

On the other hand, the inflated

3. The statute is reproduced in the American Assembly at 159-173 (App.).
10. See American Assembly, at 159.
expectations of such devotees have generated a predictable reaction. Opponents view the ombudsman as an expensive fad that would add another layer to our already unwieldy bureaucracy; it is said that more bureaucrats will be required to watch over the office of the watchdog. There also is a fear, especially among some public officials, that governmental functions will be hamstrung by a meddling outsider who knows little about the intricacies and responsibilities of administrative government. Less charitably, politicians and bureaucrats shy away from an institution that jeopardizes the “business as usual” mediocrity characteristic of some local governments. The rhetoric of this position portrays the ombudsman as a dangerous form of super-legislator who would exercise vast power in overseeing public agencies. Perhaps, in addition, some public servants resentfully view the current ombudsmania as criticism of them rather than of the system in which they operate. So considered, favorable mention of the ombudsman is thought to be degrading to the excellent level of performance by most administrators in Seattle and Washington State. Lastly, it is believed in some quarters that any good features of an ombudsman office would largely duplicate the efforts of related institutions, such as the Seattle Human Rights Commission, or Citizens Service Bureau, the “Troubleshooter” column of the Seattle Times and especially local legislators who devote considerable time responding to citizen inquiries and complaints.

Much of the applause and criticism of the ombudsman is misdirected. He cannot by fiat change any decisions of a public official; his powers are almost exclusively the powers of persuasion. To be effective he must operate informally, speedily and without the ponderous apparatus of a large staff; and he complements, rather than displaces, other institutions that dispense information to citizens and investigate grievances against official abuse. In short, an ombudsman is a high, independent official who acts as a responsible, external critic of the administrative process.

More specifically, he typically is authorized to investigate, on complaint, or on his own initiative, any administrative act of any governmental agency within his jurisdiction, exclusive of the chief executive, the legislature and the courts. The complaint procedure is simple and inexpensive; in some cases a telephone call or a single visit will suffice. To discharge his responsibilities the ombudsman may make inquiries and examine the records and documents of all agencies; he may also enter and inspect any premises, such as a jail, that are within the agency’s control. In some cases he may choose discreetly to stay his hand until the agency affected gets the job done. He has the power to issue a subpoena to compel a person to appear, give sworn testimony or produce documentary evidence. Experience has shown, however, that resort to compulsory process is rarely needed, since an effective ombudsman can secure full cooperation from an in-

12. The description of duties that follows conforms to the conventional learning on the functions of the ombudsman. See authorities cited in note 1, supra.
interested agency. An opportunity to examine official files or inspect premises is almost always enough to dispose of the grievance. The critic is not attempting to retry the case; he is simply attempting to discover whether the administrator’s methods were suitable.

After an investigation, the ombudsman may exonerate the agency or he may expose any administrative conduct that is unreasonable, unfair, inefficiently performed or otherwise objectionable. He may make suggestions—but not demands—for the solution of specific complaints, for the improvement of administrative procedures and for legislative reform. He has no power to implement his suggestions; his only weapons, beyond his investigative tools, are his prestige, objectivity and reasoned criticism. If these prove inadequate, he may resort to publicity. His findings and conclusions, whether exonerating or criticizing the agency, are of course forwarded to the complainant and usually are published for general distribution.

Most citizen inquiries and grievances never reach the investigative stage. One important function of the ombudsman is simply to dispense information and explain the mysteries of modern government. Bureaucracy is complicated enough to those whose business it is to understand, but to the uninitiated it can be utterly incomprehensible. Shuttling people back and forth between agencies is an inevitable occurrence under a government of specialized units; for example, many an exasperated Seattle citizen has filed a complaint about a traffic sign with the police only to be told that it is the city engineer who has jurisdiction to consider the problem. In some cities complaints about rats must be forwarded alternatively to housing, sanitation or sewer officials, depending upon the precise location of the wandering rodent.

An ombudsman can minimize such difficulties by referring a citizen directly to the official who can provide the necessary services or information. Some cases will be sent to private service organizations, such as the Council for the Aging or the Consumer Credit Counseling Service; others will be referred to the Legal Services Offices or the Bar Association’s Lawyer Referral Service. Occasionally an ombudsman will pass along a question to an agency and, after receiving a satisfactory explanation, will convey the information without comment to the citizen. In many instances the ombudsman, by reason of his acquired expertise, will be able to examine a complaint and immediately explain to the citizen precisely why the agency acted as it did. Reasoned explanation is instrumental to his success.

From this description, it is clear that an ombudsman can prod the administrators into prompt correspondence with aggrieved citizens. The power to elicit explanations, however, does not permit a reordering of administrative priorities. As Professor Gellhorn has observed perceptively an ombudsman can never teach public officials whether “to rearrange traffic signals, repair leaks in city water lines or remove automotive carcasses from the streets.”

signing personnel and expending resources is the administrator's. No ombudsman could order the Chief of Police to clean up abandoned automobiles at the risk of reduced police protection in the Central District or a slowdown in the efforts to combat the drug traffic on University Avenue or the prostitutes on Pike Street.

Nevertheless, as a mediator for the citizen, the ombudsman has proven to be a valuable asset to many administrators who were at first leery of his powers. Because experience shows that only a minor fraction of complaints are sustainable, the office invariably helps to increase respect for public service and appreciation for those in it.

Explanation by the ombudsman may assist the complainant to understand that what appeared to be outrageous agency behavior was actually perfectly reasonable. Extended delays by health officials in removing a dilapidated structure may be compelled by the law that protects the property owner; the deputy sheriff who refuses to arrest the husband who has just inflicted a beating on his wife may be restrained by the law that permits an arrest without a warrant for a misdemeanor only when it is committed in the officer's presence; the seeming cruelty of the Parks Department in keeping dozens of owls and eagles in captivity may result from the fact that the birds are unable to fly and protect themselves because of permanent injuries. In addition, the ombudsman can serve effectively as a forum for insulating agencies against the crossfires of political controversy; charges and counter charges during the summer of 1968 concerning conditions in the drunk tank of the Seattle City Jail could have been amicably resolved by an inspection by an ombudsman.

Lastly, the ombudsman may prove to be an important source of information for departmental supervisors. It is a rare bureau chief who does not appreciate being told when his employees are neglecting to render services; or when numerous complaints have been directed against a single miscreant. More important are the instances where general administrative practices or performance are singled out for criticism because they departed from accepted norms. The external commentator, viewing the situation from a different perspective, may give the administrator invigorating insights into the practices of his agency. Recently, the Criminal Law Section of the Seattle-King County Bar Association demonstrated the value of an impartial critic when it released a temperate and constructive report discussing the complaints of prisoners in the county jail. On the other hand, the charge, made in some quarters, that the report on the jail was a political sortie to the detriment of Commissioner Spellman's campaign for county executive, demonstrates the great need to select an ombudsman whose pronouncements will be widely accepted.

For this reason, it is apparent that the value of the ombudsman office is largely dependent upon the stature of the individual who holds it. He must be mature and responsible, trusted by the community at large and respected by public officials. Experience has shown that an effective ombudsman must have wide practical experience in governmental affairs and many associations among persons who work in
the government. He must be a recognized expert in public administration. Because many of the problems he faces are legal in nature, he should have some legal training, or, at least, have lawyers on his staff. He must be strictly non-partisan and above political intrigue. For this reason most of the proposed legislation would disqualify an ombudsman from seeking political office for a number of years both before and after his tenure. It also may be wise to select an older man who already is respected in the community and is unlikely to be tempted by politics. The early political wrangling in Seattle and King County makes a mockery of this conventional archetype of the ombudsman. Whether a man with proper qualifications can be found to fill the King County office of Citizen Complaints is a question that remains to be answered.

Thus, it is clear that the various ombudsman proposals are not drastic suggestions to re-order our political structure. Administrative critics replace no judges or legislators. Nor can they alone create good government. In the words of Professor Gellhorn, "Outsiders' denunciation of botched work can never be significant as anti-botchery efforts within administrative ranks."14 (In Seattle, for example, the current effort by the Police Department to establish comprehensive internal disciplinary procedures is of far greater value to the community than the sporadic, highly publicized efforts to establish some form of Police Review Board.) Nevertheless, the external critic can call attention to occasional departures from norms already set by law and custom; and he can expose and explain administrative practices too often left invisible. With proper qualifications and powers he can elevate public administration appreciably by assisting legislators, administrators and especially the citizens of the community.

At the legislative level, the ombudsman has a distinctive, though limited, role. By reason of his continuous exposure to problems of administrative law he is uniquely situated to identify patterns that require reform. The Nassau County ombudsman received a number of complaints from people who had their property foreclosed for failure to pay taxes although they had never been notified of the action; improvements in the notification procedures were in order. Recommendations were made and enacted into law.15

Apart from disclosing minor technical deficiencies, an ombudsman can make suggestions that would require broader policy decisions at the legislative level; in this capacity he would serve as a law revision commission, or Little Hoover Commission, in the area of administrative practice and procedure.

The ombudsman can make his greatest contribution by helping to restore the confidence of the people in their government. His guidance lessens the aggravations of trying to secure assistance from a large bureaucracy; his explanations educate the public about the efforts and tribulations of public officials. His office reduces distrust of the governmental process and takes some

14. W. GELLHORN, WHEN AMERICANS COMPLAIN, supra, note 1 at 105.
15. See AMERICAN ASSEMBLY at 118-19.
of it out of the political arena. His presence removes the likelihood of an administrative blunder inflicting a hurt on a hapless citizen. It is possible to give a single, trusted institution the general responsibility for considering cases of claimed mistreatment by public officials. Today in the City of Seattle it simply is not very helpful to inform a citizen, who may have a complaint charging rudeness on behalf of a policeman, to file his complaint with the Community Relations Unit and the Internal Investigations Division of the Police Department, the Police Liaison Committee, the Human Rights Commission, State Board Against Discrimination, Citizens Service Bureau, Times Troubleshooter, The City Council or the Mayor's Office. The tenacity to tackle that impressive list of officials, however conscientious they may be, is rarely found in the ordinary citizen.

Perhaps the greatest barrier to acceptance of the ombudsman concept is the claim that his services are unneeded because they duplicate the efforts of other agencies. That other institutions are available to respond to citizen inquiries and complaints is not to be doubted. It is equally clear that they cannot, and do not, provide the unique services supplied by an ombudsman.

Under the direction of Mr. Robert Keane, the Citizens Service Bureau of the City of Seattle, since it was established in 1964, has become a valuable and effective institution for informing the citizens about the pitfalls of modern government; due to staff limitations and a lack of formal powers, however, it has served almost exclusively as a conduit for exchanging information between citizen and administrator. Constructive criticism of public agencies has been rare; and it is difficult for the Bureau to deal with complaints more complex than the usual gripes about holes in the road, caterpillars in the neighbor's trees and delays in trash collection. Moreover, as a creature of the Mayor's office the Bureau lacks the independence that would distinguish the ombudsman. That the administrations of Mayors Braman, Miller and Uhlman have scrupulously refrained from interfering with its work is no guarantee that a future administration will be similarly respectful. Most important, a separate information center, such as the Citizens Service Bureau, is desirable to prevent the ombudsman from being bogged down with this time consuming function. Although he cannot escape entirely from the role of information dispenser, the ombudsman should, where possible, be freed to concentrate on handling grievances.

The "Troubleshooter" column in the Seattle Times has many indicia of an ombudsman but also several shortcomings. Since Mr. Dick Moody assumed responsibility for the column in September, 1968, the "Troubleshooter" has been established as a potent instrument for criticising and explaining the governmental process as well as private conduct that affects large numbers of citizens; complaints concerning police, highway, school, transit, and park officials, among others, have resulted in constructive, well rea-

soned discussions in the Times. However, though he carefully chooses topics that have wide appeal, the "Troubleshooter" cannot respond to all the queries from interested readers. This selective choice of grievances means that many will be ignored; others will be inadequately treated. Because he lacks the formal powers of an ombudsman, the "Troubleshooter" often must be content to print, albeit with appropriate skeptical commentary, the administrator's official, perhaps one sided, explanation of a case. Moreover, the newspaper critic serves only his readership and not the community at large. Most important, the primary objective of the column is to concentrate on the single, dramatic expose rather than to promote lasting reform through continuous efforts at law revision. Although the "Troubleshooter" has commendably resisted the sensationalism that has infected similar columns, his aims can never be those of an ombudsman.

Still another institution that has some of the appearances of an ombudsman is the Seattle Human Rights Commission. Dissatisfaction with the present direction of the Commission, from both within and without the organization, has resulted in a number of suggestions designed to revitalize the agency. On May 2, 1969, the City Council held a public hearing on a proposed ordinance that would authorize the Commission "to receive and consider statements, reports and complaints . . . concerning the treatment, facilities or services of any Department, division or subdivision of the City of Seattle." While adoption of this language would appear to give the Commission a general roving authority essentially equivalent to that of an ombudsman, no such grant of power is intended. The Commission unquestionably has as its primary mission disposing of complaints and making investigations and studies concerning issues of racial or religious discrimination. Its expertise is in this field; its energies will be concentrated here. The commendable decision of the City Council, to replace the Commission with a new Department of Human Rights having greatly expanded enforcement powers, does not eliminate the need for an ombudsman. While the new Department should be given every weapon necessary to tackle difficult questions within its domain—such as increased injunctive powers to combat discrimination in jobs, public contracting and the sale and rental of housing—it will not become a general administrative critic overseeing the entire governmental apparatus.

Nor was the Mayor's Police Liaison Committee an adequate substitute for an ombudsman, even within the narrow domain of police practices. Composed of citizens and police officers, the Committee, as it was conceived in the summer of 1968, apparently represented a genuine attempt by Mayor Braman to improve rapidly deteriorating police-community relations. The Committee's powers were uncertain and its objectives undefined. The few public meetings that were held were largely denunciation sessions where the Central District community aired its grievances and demanded fuller participation in the Committee's deliberations; in response, the group was expanded to include several Black members.
Whatever its goals, the Committee is now defunct. On April 1, 1969, the chairman requested that its functions and single staff member be absorbed by the Human Rights Commission. This failure was predictable. The notion of a Police Review Board, popular in some quarters a few years ago, is now largely discredited and points up many of the difficulties faced by the Mayor's committee. The Review Board singles out police, which is understandably offensive to them, and ignores other areas of governmental activity of equal concern to civilians, such as health, welfare and educational authorities.\footnote{17} Review boards are also deficient in that they presuppose an adversary situation with a complainant on one side and the accused police officer on the other. Inherent in this setting are all the cumbersome procedural safeguards that are afforded by the criminal process. These formalities are a weighty deterrent to the filing of complaints; in Rochester, New York, for example, the review board in its first full year of operation received the paltry total of seven unsigned and two signed complaints.\footnote{18} Even after a long and drawn out trial-type proceeding, we are presented with a disputed resolution of hotly contested issues of fact, usually, whether the police officer used unnecessary force in arresting the citizen. Whatever the conclusion of the tribunal, a large number of citizens will be unsatisfied; on inflammatory issues such as these many of us hold strong opinions although we know nothing about the case.

The ombudsman can avoid these pitfalls because he is not in the business of judging factual disputes. He will never attempt to decide whether an officer used unnecessary force; what he can do is to make sure that all complaints are fully and fairly considered by departmental supervisors, or that suitable instructions are issued to prevent recurring problems. The ombudsman looks for administrative flaws that can be corrected; he does not carp over yesterday's irreparable mistakes. From this point of view, the issue is not the guilt or innocence of the police officer, the welfare worker, or other public employee, but the propriety of the action of his superiors.

Legislators at the local, state and federal level often provide services comparable to those of the ombudsman. In Seattle and the State of Washington, however, these services are by no means adequate. Legislators in Seattle and Olympia do not even have sufficient staff to perform effectively their crucial law making functions, much less to serve as general ombudsmen for all constituents. They are generalists lacking expertise in specialized administrative practices; they are poorly situated to judge the merits of a complaint. As individuals they lack subpoena power. Were the resources and power available, reliance upon a legislator's influence would still be a poor substitute for an institutionalized administrative critic. Encouraging legislators to attack collaterally specific problems of administration is hardly the route to efficient government. For every

\footnote{17} The most decisive—and perhaps fatal—debunking of the police review board idea is found in W. GELLHORN, WHEN AMERICANS COMPLAIN, supra note 1, at 179-95.

\footnote{18} See id., at 180.
citizen who secures preferential treatment by soliciting legislative intervention there is another citizen who must wait a little longer while his complaint filters through ordinary channels; and only with an ombudsman is the policy or procedural problem underlying both cases likely to be examined and rectified.

In California the Grand Jury has broad powers to investigate charges of corruption, incompetence and waste in governmental operations. It is authorized, for example, to look into alleged improprieties in purchasing and bidding procedures, like those recently mentioned in connection with the King County Sanitary Operations Department. Although modest successes have been realized in California, the Grand Jury has had its problems. Randomly selected citizens working for a limited period acquire little expertise and can maintain no professional continuity. They are often unduly influenced by the prosecutor. Their staffing is inadequate and they are unable to enforce their edicts. Again and again recommendations and criticisms made in one annual report are repeated in the next annual report. There is one recorded instance in which school officials took three years to react to a Grand Jury suggestion that broken glass be removed from a school yard.

This is not to say that the state of Washington is in no need of a drastically revamped and revitalized grand jury procedure. It is to say, however, that grand jury reform, even on so broad a scale as exists in California, will not dispose of the public need that can only be met by an ombudsman. The Judicial Council’s recent proposal to reorganize grand jury procedures, which died in the Senate Rules Committee during the 1969 legislative session, recommends that the grand jury’s investigatory powers be confined to criminal activity and corruption. The opinion expressed in the Council’s commentary was that general “watchdog functions are better handled by the state auditor and, if such an office is created, some type of ombudsman.”

No consideration of the ombudsman should ignore the related contributions of other institutions providing services to the citizens of Seattle and the State of Washington. The Consumer Protection Division of the Attorney General’s Office, the State Multi-Service Center, the Rumor Center, the various Legal Services Offices, the State Board Against Discrimination and other agencies all dispense information and consider complaints regarding deficiencies in governmental service. For various reasons, however, these institutions fall short of providing the services that are uniquely the ombudsman’s. It remains to be seen whether the impulse towards better government that prompted the citizens of King County to vote for an Office of Citizens Complaints will be realized in practice at various levels of government in this State.

Conclusion
There is no crisis in public administration in Seattle, King County or

the State of Washington. We are in no danger of being swamped with incompetence, lethargy and dishonesty. On the contrary, the quality of services is generally high and the officials who dispense these services are usually conscientious and considerate. For these reasons we can afford the added luxury of an external critic at all levels of government. He can assist the law makers by pointing out defects in legislation exposed by his handling of actual cases. He can cooperate with administrators by exposing unfair and inefficient procedures and by explaining to the citizenry the reason for certain actions. Most important, reasoned explanations by a respected and visible source can help to overcome breakdowns in communication that are at the root of much of the dissatisfaction with public agencies. Depersonalization has been a price we have paid to secure the advantages of modern administrative government; the office of ombudsman, in some small way, can restore the human element to our governmental process.